IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 6, 2007 Session

GEORGE & REBECCA MUSE d/b/a J & E CONSTRUCTION COMPANY v. FIRST PEOPLE'S BANK OF TENNESSEE

Appeal from the Chancery Court for Knox County
No. 162609-2 Daryl R. Fansler, Chancellor

No. E2005-02869-COA-R3-CV - FILED MARCH 21, 2007

In this breach of contract case, the plaintiffs allege that the defendant violated the terms of a line of credit promissory note by discontinuing disbursements to the plaintiffs under the note without cause. The defendant filed a motion for summary judgment upon grounds that the plaintiffs' claims had already been settled under a prior settlement agreement and that the plaintiffs were without standing to pursue their claims. The trial court granted the motion. Upon our finding that the evidence does not support the trial court's ruling as to all of the plaintiffs' claims, the trial court's judgment is vacated in part and affirmed in part, and the case is remanded for trial on the merits.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part and Vacated in Part; Cause Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Margaret Beebe Held, Knoxville, Tennessee, for the appellants George & Rebecca Muse d/b/a/ J & E Construction Company.

Thomas H. Dickenson and Kristi M. Davis, Knoxville, Tennessee, and Tom O. Wall, Jefferson City, Tennessee, for the appellee First Peoples Bank of Tennessee.

OPINION

I. Standard of Review

In this appeal, George and Rebecca Muse ("the Muses") argue that the trial court erred in dismissing their cause of action against First Peoples[1] Bank of Tennessee ("the Bank") by summary judgment. Before presenting our recitation of the facts and analysis of the issues raised in this matter, we believe it appropriate that we set forth the standard governing our review of a trial court's grant of summary judgment.

Summary judgments enable courts to conclude cases that can and should be resolved on dispositive legal issues. *See Byrd v. Hall,* 847 S.W.2d 208, 210 (Tenn. 1993); *Airport Props. Ltd. v. Gulf Coast Dev., Inc.,* 900 S.W.2d 695, 697 (Tenn. Ct. App. 1995). They are appropriate only when the facts material to the dispositive legal issues are undisputed. Accordingly, they should not be used to resolve factual disputes or to determine the factual inferences that should be drawn from the evidence when those inferences are in dispute. *See Bellamy v. Federal Express Corp.,* 749 S.W.2d 31, 33 (Tenn. 1988).

To be entitled to a summary judgment, the moving party must demonstrate that no genuine issues of material fact exist, and that he or she is entitled to judgment as a matter of law. *See* Tenn. R. Civ. P. 56.04; *Byrd v. Hall,* 847 S.W.2d at 210; *Planet Rock, Inc. v. Regis Ins. Co.,* 6 S.W.3d 484, 490 (Tenn. Ct. App. 1999). A summary judgment should not be granted, however, when a genuine dispute exists with regard to any material fact. *Seavers v. Methodist Med. Ctr.,* 9 S.W.3d 86, 97 (Tenn. 1999); *Hogins v. Ross,* 988 S.W.2d 685, 689 (Tenn. Ct. App. 1998). Our task on appeal is to review the record to determine whether the requirements for granting summary judgment have been met. *See Hunter v. Brown,* 955 S.W.2d 49, 50-51 (Tenn. 1997); *Aghili v. Saadatnejadi,* 958 S.W.2d 784, 787 (Tenn. Ct. App. 1997). Under Tenn. R. Civ. P. 56.04, summary judgment is appropriate where: (1) there is no genuine issue with regard to the material facts relevant to the claim or defense contained in the motion, *see Byrd v. Hall*, 847 S.W.2d at 210; and (2) the moving party is entitled to a judgment as a matter of law on the undisputed facts. *See Anderson v. Standard Register Co.*, 857 S.W.2d 555, 559 (Tenn. 1993). A party seeking a summary judgment must demonstrate the absence of any genuine and material factual issues. *Byrd v. Hall,* 847 S.W.2d at 214.

When the party seeking summary judgment makes a properly supported motion, the burden shifts to the non-moving party to set forth specific facts establishing the existence of disputed, material facts which must be resolved by the trier of fact. *See Byrd v. Hall*, 847 S.W.2d at 215; *Robinson v. Omer*, 952 S.W.2d 423, 426 (Tenn. 1997). The non-moving party may not simply rest upon the pleadings, but must offer proof by affidavits or other discovery materials (depositions,

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[1] While the notice of appeal incorrectly referred to the Bank as "First People's Bank of Tennessee," it is apparent from the record that the Bank's actual title is "First Peoples Bank of Tennessee." Although in the style of this opinion we have retained the Bank's title as set forth in the notice of appeal, elsewhere in the opinion, we have corrected this error.

answers to interrogatories, and admissions on file) provided by Rule 56.06 showing that there is a genuine issue for trial. If the non-moving party does not so respond, then summary judgment, if appropriate, shall be entered against the non-moving party. Tenn. R. Civ. P. 56.06.

A summary judgment will be upheld only when the undisputed facts reasonably support one conclusion - that the moving party is entitled to a judgment as a matter of law. *See White v. Lawrence,* 975 S.W.2d 525, 529 (Tenn. 1998); *McCall v. Wilder,* 913 S.W.2d 150, 153 (Tenn. 1995). We will affirm a summary judgment on different grounds than those relied on by the trial court upon our determination that the trial court reached the correct result. *Clark v. Metropolitan Government of Nashville and Davidson County*, 827 S.W.2d 312 (Tenn. Ct. App. 1992).

Summary judgments do not enjoy a presumption of correctness on appeal. *See Nelson v. Martin,* 958 S.W.2d 643, 646 (Tenn. 1997); *City of Tullahoma v. Bedford County,* 938 S.W.2d 408, 412 (Tenn. 1997). Accordingly, when we review a summary judgment, we view all the evidence in the light most favorable to the non-movant, and we resolve all factual inferences in the non-movant's favor. *See Luther v. Compton,* 5 S.W.3d 635, 639 (Tenn. 1999); *Muhlheim v. Knox County Bd. of Educ.,* 2 S.W.3d 927, 929 (Tenn. 1999).

II. Facts

When construed in favor of the Muses, the underlying facts of this case are as follows:

On February 16, 2000, J & E Construction Company ("J & E") entered into a contract with Steven K. Maddox designated "Real Estate Sales Contract" ("the subdivision contract") for the purpose of developing a subdivision designated "Emory Vista" on land owned by Mr. Maddox in Knox and Anderson counties. The contract provided that Mr. Maddox would convey one-half of the subdivision lots to J & E and in return, J & E would construct specified improvements to the lots. The contract also provided that J & E would be solely responsible for financing construction of the improvements and that Mr. Maddox would execute a deed of trust in favor of J & E's lender to that end upon certain conditions, including among other things that the loan agreement incorporate language requiring that Mr. Maddox approve all disbursements. The contract was signed by Mr. Maddox and by George Muse as president of J & E; neither George Muse nor Rebecca Muse were parties to this contract as individuals.

On February 25, 2000, the Muses executed a line of credit promissory note ("the promissory note") with the Bank in the amount of $416,000 secured by mortgages on property belonging to the Muses and also by property belonging to Mr. Maddox. In March of 2000, the Bank began making disbursements under the note, and J & E commenced construction of the agreed-upon improvements. Thereafter, however, the Bank ceased making disbursements under the note and advised Mrs. Muse that it had done so upon instruction of Mr. Maddox. Although the subdivision contract had provided that language be included in the loan agreement that would require Mr. Maddox's prior authorization for each disbursement under any loan agreement to finance the lot improvements, a copy of the promissory note is not included in the record, and it cannot be determined if such language was in fact a part of the note. With alternative financing apparently unavailable, J & E was unable to

complete its obligations under the subdivision contract, and Mr. Maddox terminated such contract upon grounds of default.

After termination of the subdivision contract, J & E's surety, RLI Insurance Company ("RLI") filed suit[2] against Mr. Maddox in the Knox County Chancery Court ("the RLI case"). In turn, Mr. Maddox asserted causes of action against J & E, the Muses, and others as third-party defendants.

In April of 2002, J & E filed a cross claim against Mr. Maddox in the RLI case, asserting inter alia "that any action or failure to act alleged as a default by J & E under the provisions of the [subdivision] contract is a direct result of Maddox's actions in refusing to agree to draws [under the promissory note] and not as result of a default by J & E." The cross claim further asserted that "[a]s a result of the actions of Maddox which resulted in the inability of J & E to obtain draws under the Muse loan, J & E remains liable on certain debts for subcontractors and suppliers to the project for materials that went into the project, has suffered loss of equipment and expense due to repossession, and has lost profits due under the project, all of which may total in excess of $800,000." The cross claim demanded damages pursuant to paragraph 7 of the subdivision contract which provided that upon termination of the contract for default Mr. Maddox would pay J & E the reasonable value of any improvements constructed by J & E less costs incurred by Mr. Maddox for corrections of defects. J & E further requested that it "be awarded its damages in an amount subject to proof as demanded herein."

Thereafter, Mr. Maddox and George Muse, as owner of J & E, executed a document styled "Mutual Release and Settlement Agreement" ("the settlement agreement") which stated in pertinent part the following:

> This Mutual Release and Settlement Agreement ("Agreement") is executed by and between Steven K. Maddox ("Maddox"); George E. Muse ("Muse"); and J & E Construction Co., Inc., a/k/a J & E Construction, a/k/a J & E Construction Company (all three entities collectively referred to herein as "J & E").
>
> WITNESSETH
>
> WHEREAS, Maddox and J & E entered into Real Estate Contract of Sale dated February 16, 2000 (the Contract) with regard to the development of a subdivision known as Emory Vista Subdivision (the "Project"); and

[2]Knox County Chancery Court case no. 150325-3, *RLI Insurance Company, Inc. v. Steven K. Maddox and RLI Insurance Company, Inc. v. J & E Construction, Inc.; George E. Muse; Rebecca R. Muse; Josh Muse; and Julie Muse and J & E Construction, Inc. v. Steven K. Maddox.*

WHEREAS, Muse is the principal officer and shareholder of J & E; and

WHEREAS, disputes arose between Maddox and J & E with regard to each parties' obligations under the Contract; and

WHEREAS, the disputes between the parties resulted in litigation styled RLI Insurance Company, Inc. v. Steven K. Maddox and RLI Insurance Company, Inc., v. J & E Construction, Inc., George E. Muse, Rebecca R. Muse, Josh Muse and Julie Muse and J & E Construction, Inc. v. Steven K. Maddox, Knox County, Tennessee Chancery Court Case No. 150325-3 ("the Lawsuit"); and

WHEREAS, Maddox paid certain debts of J & E, Muse and Rebecca R. Muse, and Maddox received an assignment of all rights of First Peoples Bank of Tennessee to collect from Muse and Rebecca R. Muse amounts owed on a certain promissory note dated February 25, 2000 (the "Note"); and

WHEREAS, Muse, Rebecca R. Muse, Josh Muse and Julie Muse (collectively referred to herein as the "Muses") executed an indemnity agreement in favor of RLI Insurance Company, Inc. ("RLI") with regard to the Project; and

WHEREAS, Maddox, Muse and J & E desire to settle all disputes among and between them;

NOW THEREFORE, Maddox, Muse and J & E agree as follows:

1. The undersigned individuals warrant and represent that they have the power and authority to execute this Mutual Release and Waiver of Lien.

2. For purposes of this Agreement, "Claims" shall be defined as follows: all manner of actions or causes of action, in law or equity, suits, administrative actions or complaints, debts, liens, contracts, agreements, promises, liabilities, demands, damages, losses, costs or expenses of any nature whatsoever, judgments, orders and liabilities of whatever kind or nature, whether now known or unknown, vested or contingent, suspected or unsuspected, that have existed or may have existed, or that do exist as of the date of this Agreement, or that could or do later accrue as a result of (in whole or in part)

transactions, occurrences, acts, or omissions that have occurred as of the date of this Agreement.

3. Maddox shall pay John W. Butler, Esq., as attorney for J & E Construction, Inc., the total amount of $15,000.00 as full and final settlement of any and all Claims that J & E or Muse may have against Maddox relating to or in any way arising out of the Contract, the Project, or any other matter alleged or asserted in the Lawsuit.

4. J & E and Muse agree that payment from Maddox as provided in Paragraph 3 above is full compensation to for any and all Claims by J & E or Muse against Maddox.

5. Except for the enforcement of this Agreement or as otherwise provided herein, Muse hereby fully, forever, irrevocably, and unconditionally releases and discharges Maddox and the Project property from any and all Claims, including attorneys' fees and costs, which it has against Maddox arising out of or in any way relating to the Contract or the Project.

6. Except for the enforcement of this Agreement or as otherwise provided herein, Maddox hereby fully, forever, irrevocably, and unconditionally releases and discharges Muse and J & E from any and all Claims, including attorneys' fees and costs, which it has against Muse and J & E arising out of or in any way relating to the Contract or the Project.

7. In consideration of the payment by Maddox referred to in paragraph 3, Muse agrees to defend, indemnify and hold Maddox harmless from any Claims by the Muses.

* * *

16. The individuals who execute this Agreement represent and warrant that: (i) they are duly authorized to execute this Agreement; and (ii) no other signature, act or authorization is necessary, and (iii) to the best of their knowledge, the Parties named are all the necessary and proper parties.

The settlement agreement was signed by Steven K. Maddox as "owner" under his printed name and by George E. Muse as "owner" under the printed name "J & E Construction, Inc."

On November 4, 2004, the Muses filed a verified complaint against the Bank in the Knox County Chancery Court for breach of contract with regard to the promissory note, for tortious

interference with the subdivision contract, and for tortious interference with business relationships between the Muses and "creditors and vendors." Upon motion of the Bank filed January 14, 2005, the trial court dismissed the claims of tortious interference with contract and tortious interference with business relationships.

Thereafter, the Bank filed a separate motion for summary judgment with regard to the breach of contract claim with grounds stated therein as follows:

> 1. Plaintiffs' present claim against the Bank arises from or is otherwise derivative of alleged breaches of a February 2, 2003[3] "Real Estate Contract of Sale" a copy of which is attached as Exhibit A to the Affidavit of Steve Maddox in Support of Motion For Summary Judgment ("Maddox Affidavit") and filed contemporaneously herewith.
>
> 2. On August 17, 2004 Plaintiffs fully and finally compromised all claims[4] relating to the "Real Estate Contract of Sale" with Steve Maddox by way of a "Mutual Release and Settlement Agreement," ("Settlement Agreement"), a copy of which is attached as Exhibit C to the Maddox Affidavit.
>
> 3. The Settlement Agreement bars the Plaintiffs from recovery on their present claims against the Bank, which contract claims are derivative of and essentially the same contract claims as were fully and finally compromised by said Settlement Agreement.
>
> 4. Plaintiffs have no standing to pursue their present contract claims against the Bank because Plaintiffs have been fully compensated for any and all claims that they may have had under the "Real Estate Contract of Sale." The Plaintiffs further lack standing because the said "Real Estate Contract of Sale" was executed by and between Steven K. Maddox and J & E Construction Company - and not the Plaintiffs herein in their individual capacities.

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[3] We will assume that this date is an error. The subdivision contract shows that it was actually executed on February 16, 2000.

[4] A footnote to the motion states, "The referenced claims were brought in a prior Knox County, Tennessee Chancery Court Action bearing Docket No. 150325-3 and styled *RLI Insurance Company v. Steven K. Maddox v. J & E Construction, Inc.; George E. Muse; Rebecca R. Muse; Josh Muse; and Julie Muse.*] relating to the 'Real Estate Contract of Sale' with Steve Maddox by way of a 'Mutual Release and Settlement Agreement,' ('Settlement Agreement'), a copy of which is attached as Exhibit C to the Maddox Affidavit."

As stated, in addition to the subdivision contract and the settlement agreement, the affidavit of Mr. Maddox was attached to the motion. It provided as follows:

> On February 16, 2000, I entered into the Real Estate Contract of Sale referenced in Paragraph 7 of the Complaint (the "Contract").... The party that I contracted with was identified as J & E Construction Company ("J & E"), and George E. Muse executed the contract identifying himself as the "president" of that company. At no time did I execute any contract with regard to the Emory Vista project with either George or Rebecca Muse in their individual capacities.
>
> I terminated the Contract for default of J & E. Disputes arose between me and J & E with regard to the Emory Vista project with regard to the rights of J & E to payment under the Contract. Claims and counterclaims were asserted between me and J & E's surety RLI, in a case filed in Knox County, Tennessee, Chancery Court, Case Number 150325-3. J & E Construction, Inc. filed a cross claim against me in that action, a copy of which is attached as ***Exhibit B*** (the "J & E Complaint").
>
> In the J & E Complaint, J & E Construction, Inc. asserted that it was the party who contracted with me and was entitled to assert J & E's rights under the Contract.
>
> In 2004, I entered into a Mutual Release and Settlement Agreement with J & E Construction, Inc., a copy of which is attached as ***Exhibit C***. The Mutual Release and Settlement Agreement recited that the Contract had been executed by J & E.
>
> J & E was identified in the Mutual Release and Settlement Agreement as "J & E Construction Co. (sic), Inc., a/k/a J & E Construction Company." The document was executed by Mr. Muse individually and as "Owner" for J & E Construction, Inc."
>
> Mr. Muse was also an individual party to the Mutual Release and Settlement Agreement, and both J & E and Mr. Muse represented in Paragraph 16 of the Agreement that they were the "necessary and proper' parties to execute the Agreement and that no other signature parties were necessary.
>
> In paragraph 4 of the Mutual Release and Settlement Agreement, J & E and Mr. Muse agreed that payment by me as provided in the Agreement would constitute "full compensation for any and all Claims by J & E or Muse against Maddox."

> Paragraph 3 of the Mutual Release and Settlement stated that I would pay Fifteen Thousand and 00/100 Dollars ($15,000.00) to J & E Construction, Inc. as "full and final settlement of any and all Claims that J & E or Muse may have against Maddox relating to or in any was arising out of the Contract, the Project, or any other matter alleged or asserted in the Lawsuit."
>
> I paid J & E Construction, Inc. the $15,000.00 as provided by the Mutual Release and Settlement Agreement. Therefore, J & E has been paid any and all amounts that were owed to it under the Contract.
>
> J & E released the claims asserted in the J & E Complaint attached as ***Exhibit B.***
>
> George Muse and Rebecca Muse are not parties to the Contract, and I am not aware of any basis on which they assert rights to recover damages under that Contract. To the extent that they assert rights as assignee under the Contract, J & E has already acknowledged the receipt of full and final payment in the amounts that were owed to it under the Contract.
>
> Mr. Muse's representations in the Complaint that J & E Construction Co. was a business name used by him and his wife is in direct conflict with several representations made by Mr. Muse to me in the Mutual Release and Settlement Agreement.

The Muses' response to the motion for summary judgment argued that the motion should be denied for the following reason:

> [T]he contract discussed in [the Bank's] Motion is between J & E Construction Company and Steve Maddox; Peoples Bank is not a party to that contract or an intended beneficiary of that contract. The contract that forms the basis of this litigation is contained in the Promissory Note signed by George and Rebecca Muse in favor of First People's Bank of Tennessee, and contains all terms that are material to this litigation. A copy of the relevant contract is attached to this Response as Exhibit 1.

The matter came on for hearing after which, on December 9, 2005, the trial court entered its order granting the motion and dismissing the Muses' complaint for breach of contract. The trial court did not indicate the specific grounds for its decision. The Muses now appeal that ruling.

III. Issues

The issues we address are as follows:

1) Was summary judgment appropriate because the Muses failed to present any evidence in rebuttal of evidence submitted in support of the motion for summary judgment?

2) Was summary judgment appropriate because the settlement agreement settled all claims against the Bank that were related to the subdivision contract?

3) Was summary judgment appropriate upon the ground that the specific claims asserted by the Muses either duplicated claims that were settled under the settlement agreement and/or were claims that the Muses lacked standing to pursue?

IV. Analysis

A. Sufficiency of Evidence

First, the Bank contends that the Muses failed to present any proof in rebuttal of the evidence submitted in support of the motion for summary judgment. In this regard, the Bank correctly observes that contrary to the indication in the Muses' response to the motion that a copy of the promissory note was attached as Exhibit 1, such copy was not attached to the motion nor otherwise included in the record.[5] As noted above, under Rule 56.06, actual evidence is required to overcome a properly supported motion for summary judgment, and the non-moving party may not simply rely on allegations in the pleadings. However, as previously stated, the Muses' complaint charging the Bank with breach of contract under the promissory note was a verified complaint and, as such, it has the force and effect of an affidavit. *See Lavado v. Keohane*, 992 F.2d 601, 605 (6th Cir. 1993); *Knight v. Hospital Corporation of America*, No. 01A01-9509CV-00408, 1997 WL 5161, at *4 n.4 (Tenn. Ct. App. Middle Section, filed Jan. 8, 1997). Thus, we disagree with the Bank's contention that the Muses presented no evidence that rebuts the evidence presented in support of the motion for summary judgment. Further, as we noted in *Hart v. Joseph Decosimo and Company, LLP,* 145 S.W.3d 67, 76 (Tenn. Ct. App. 2004), "[u]nder our standard of review of the trial court's grant of summary judgment, we are required to take as true verified facts favorable to the opponent of the motion." Accordingly, we are required to take as true the following facts set forth in the Muses' complaint:

> On February 25, 2000, George and Rebecca Muse executed a promissory note with First Peoples Bank in the amount of Four Hundred Sixteen Thousand Dollars and no cents ($416,000.00). The

[5]The Muses filed a motion in this Court to supplement the record to include a copy of Exhibit 1. On remand, the trial court ruled that the exhibit allegedly attached as Exhibit 1 was not in the record and was not before the trial court when it ruled on the motion for summary judgment. Accordingly, the Muses' motion to supplement the record on appeal was denied.

> note evidenced a line of credit to the Muses.... The Note was to be paid off on August 23, 2000.
>
> The note was secured by a mortgage from George E. Muse and Rebecca R. Muse to the Bank and by allegedly by a mortgage executed by Mr. Maddox.
>
> No loan document permitted Steve Maddox to halt disbursement of any payment of proceeds from the loan.
>
> On the same day that George and Rebecca Muse executed the promissory note, they along with Steve Maddox and Mr. Maddox's wife, Kristi Wilder-Maddox executed a Deed of Trust in favor of First People's Bank of Tennessee. The Deed of Trust references the promissory note executed the same day.
>
> Beginning in March 2000, J & E construction began working on the subdivision development project and the bank began making disbursements under the loan.
>
> At all material times, the Muses were current in their payments and compliant with all terms of the note.
>
> On or around November 21, 2000, Ms. Muse contacted the bank to request a disbursement. The loan officer informed her that Steve Maddox had ordered the bank to stop disbursements on the loan between George Muse, Rebecca Muse and the First People's Bank.
>
> First Peoples Bank stopped disbursing funds under the loan.
>
> Because the Bank stopped payment on the loan, J & E Construction was unable to pay creditors or to complete the subdivision development project, and defaulted on numerous contracts with its creditors.

As discussed hereinafter, this evidence along with other evidence in the record was sufficient to rebut the evidence relied upon by the Bank in support of its motion for summary judgment.

B. The Settlement Agreement

Next, the Bank argues that the Muses settled all claims arising out of the contract with Mr. Maddox and that these included any claims against the Bank for breach of the promissory note.

In support of this argument, the Bank asserts that the following facts were undisputed:1) the Muses obtained financing from the Bank because their company, J & E, was required to do so by the subdivision contract; 2) litigation arose between J & E, the Muses and Steve Maddox regarding obligations under the subdivision contract; 3) J & E and the Muses filed a cross claim in that litigation against Mr. Maddox alleging that "[a]s a result of the actions of Maddox which resulted in the inability of J & E to obtain draws under the Muse loan, J & E remains liable on certain debts for subcontractors and suppliers to the project for materials that went into the project, has suffered loss of equipment and expense due to repossession and has lost profits due under the project, all of which may total in excess of $800,000"; 4) J & E and the Muses sought compensation for such losses, and under the settlement agreement they agreed to accept $15,000 as full compensation for any losses arising out of the subdivision contract; 5) the settlement agreement referenced the promissory note between the Muses and the Bank; 6) the settlement agreement acknowledged that "Maddox paid certain debts of J & E, [and the Muses], and Maddox received an assignment of all rights of [the Bank] to collect from [the Muses] amounts owed on [the promissory note]."

The Bank contends that the Muses' cause of action for breach of the promissory note is barred because the note was entered into in furtherance of the subdivision contract, and the settlement agreement settled any and all claims arising under the subdivision contract. The Bank states that the Muses' "decision to broadly settle all claims arising out of obligations under the contract served as an acknowledgment of full compensation." We do not agree.

The promissory note was entered into between the Bank and the Muses individually. We acknowledge that the promissory note was related to the subdivision contract, and the settlement agreement provided for the settlement of any and all claims relating to or in any way arising out of the subdivision contract and the development of the subdivision contract or any other matter asserted in the RLI litigation. However, the agreement only settled such claims as between J & E and George Muse and *Steve Maddox,* not the Bank. As evidence in this regard, we note paragraph 3) of the agreement which, as previously noted, stated:

> Maddox shall pay John W. Butler, esq., as attorney for J & E Construction, Inc., the total amount of $15,000.00 as full and final settlement of any and all Claims that J & E or Muse may have *against Maddox* relating to or in any way arising out of the [subdivision] Contract, the [subdivision development] Project, or any other matter alleged or asserted in the [RLI] Lawsuit.

(emphasis added). Further, as reiterated at paragraph 4 of the agreement, "J & E and Muse agree that payment from Maddox as provided in paragraph 3 above is full compensation to or for any Claims by J & E or Muse *against Maddox*." (emphasis added). These and other evidentiary statements clearly show that the settlement agreement was confined to claims between J & E and Muse and Steve Maddox. We find nothing in the agreement that can be reasonably construed to be a settlement of any claim by the Muses against the Bank. Further, while the Bank correctly states that the agreement referenced the promissory note and acknowledged the assignment to Mr. Maddox by the Bank of claims against the Muses arising under the note, these facts are immaterial as regards the

Muses' right to pursue a cause of action under the note against the Bank. Acknowledgment of this assignment constituted nothing more than a recognition that any claims the Bank might have had against the Muses were compromised and settled by agreement of the Bank's assignee, Mr. Maddox. We find nothing in the settlement agreement barring the Muses' breach of contract claim against the Bank, and the Bank's argument to the contrary is without merit.

C. Duplication of Claims and Standing

Finally, the Bank argues that summary judgment was appropriate in this case because the claims for damages asserted by the Muses in their complaint for breach of the promissory note duplicated claims that were already satisfied by the settlement agreement or are claims that the Muses do not have standing to pursue.

The Muses' complaint against the Bank included a prayer for relief seeking damages 1)"arising as a consequence of People's Bank's breach of contract according to the terms of the promissory note;" 2) "further an amount equal to the amounts owed to creditors and vendors;" 3) " lost profits from the sale of lots that they were unable to realize due to their inability to secure other financing" and; 3) "other compensatory damages as are necessary to make the Plaintiffs whole." The Bank failed to present any evidence showing that the settlement agreement compromised and settled any damage claims that arose pursuant to the terms of the promissory note, nor did the Bank show that the agreement compromised and settled any claims for amounts the Muses allegedly owed creditors and vendors or any claims for compensatory damages that would make the Muses whole as a result of the alleged breach of the promissory note. The Bank further failed to present any proof that the Muses were without standing to pursue these claims. However, with regard to the remaining claim for lost profits from the anticipated sale of the subdivision lots, we agree with the Bank.

In their motion for summary judgment, the Bank asserted that the subdivision contract "was executed by and between Steven K Maddox and J & E Construction Company - and not the [Muses] in their individual capacities." The subdivision contract confirmed this assertion, stating that it was a contract between J & E Construction Co. and Steven K. Maddox, as did Mr. Maddox's affidavit. The settlement agreement also treated the Muses and J & E as separate parties and referred to J & E as "J & E Construction Co., Inc. a/k/a J & E Construction, a/k/a J & E Construction Company." Further, George Muse signed the agreement as owner of "J & E Construction Inc." Neither other evidence in the record nor the Muses' response to the motion for summary judgment refuted the Bank's assertion of the distinction between J & E and the Muses as individuals. It is further beyond dispute that under the subdivision contract, it was J & E, not the Muses, to whom Mr. Maddox promised one-half of the subdivision lots in return for construction of improvements, and there is no evidence in the record that any present or future interest in the lots was conveyed to the Muses individually. Therefore, any claim for loss of profits from the anticipated ownership and sale of the subdivision of the lots belonged to J & E, not the Muses. It is also of no avail to the Muses that Mr. Muse was an officer and shareholder of J & E for, as the Tennessee Supreme Court noted in *Hadden v. City of Gatlinburg*, 746 S.W.2d 687, 689 (Tenn. 1988), "[a] corporation and its stockholders are distinct legal entities even if all the stock in the corporation is owned by one stockholder. Even a

stockholder who is the sole shareholder of a corporation may not bring a suit to right a wrong done to the corporation." (Citations omitted).

In summary, we hold that summary judgment was improper with regard to all of the claims for breach of the promissory note, with the exception of the claim for lost profits from the anticipated sale of the subdivision lots.

V. Conclusion

For the foregoing reasons the summary judgment is vacated in part and affirmed in part, and the case is remanded for trial on the merits consistent with our opinion herein. Costs on appeal are assessed between the parties equally.

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SHARON G. LEE, JUDGE